

### REMARKS

A total of 14 claims remain in the present application. The foregoing amendments are presented in response to the Office Action mailed May 21, 2007, wherefore reconsideration of this application is requested. By way of the above-noted amendments, original claims 1-9 have been cancelled in favour of new claims 21-27, which more clearly define features of the present invention. Claims 11, 12, 19 and 20 have been cancelled to avoid redundancy, and claims 10 and 13-18 amended for consistency with new claims 21-27. In preparing the above-noted amendments, careful attention was paid to ensure that no new subject matter was introduced. It is further noted that no surrender of subject matter is intended by way of the present amendments, which are presented for the purposes of clarification and consistency only.

Referring now to the text of the Office Action:

- the Information Disclosure Statement filed September 16, 2003 is objected to under 37 C.F.R. § 1.97, 1.98 and MPEP §609; and
- claims 1-20 stand rejected under 35 U.S.C. § 102(c), as being unpatentable over the teaching of United States Patent No. 6,992,978 (Humblet et al).

The Examiner's various claim rejections are believed to be traversed in view of the following discussion.

#### Objections to the Information Disclosure Statement

A supplemental Information Disclosure statement is being submitted simultaneously herewith, providing publication information, including the publication date, for each of the references identified at AAR and AT of Form PTO-1449 submitted on September 16, 2003.

Consideration of the identified references is courteously requested.

#### Claim Rejections under 35 U.S.C. § 102(c)

United States Patent No. 6,992,978 (Humblet et al) teaches methods and systems for "fast and reliable failure notification and accelerated switchover for path protection in a

communications network having several overlapping areas of nodes interconnected by communications links is described. Upon a failure event involving one of the communications links, a failure message is broadcast identifying the failed link, the broadcast being confined within the areas which include the failed link. A reliable transmission protocol is provided wherein at one or more of the nodes, a LAPD protocol unnumbered information frame containing the failure message is sent to connected nodes. The failure message is resent in another unnumbered information frame after a time interval unless an unnumbered acknowledgment frame containing or referencing the failure message is received from the connected node. A method of path protection includes establishing plural working paths through the nodes. For each working path, an associated protection path is precalculated. A priority is assigned to each working path and associated protection path. A protection path is precalculated for each area through which a particular working path traverses. Upon a failure event, working paths that include the failed link are switched to their respective protection paths. Higher priority protection paths can preempt lower priority paths that share at least one link. At each node, linked lists for protection path activation, working path deactivation and path preemption are implemented upon a failure event.” [Abstract]

The person of ordinary skill in the art will recognise that Humble et al. describes a system that is closely similar to the prior art described in the background of the present application at paragraphs 4-10. Thus, the network provides a plurality of working paths WP1, WP2, WP3 etc. for carrying non-preemptable traffic during normal operations of the network. Each working path is associated with a respective protection path PP1, PP2, PP3 etc. When a network failure is detected, a path protection switching mechanism is activated to reroute non-preemptable traffic from the affected working paths and into their corresponding protection paths. As described at col 15, line 48 to col 16 line 43, the protection switching operation may implement a traffic priority hierarchy, in which higher priority traffic is granted preferential access to the protection paths. In addition, the switching mechanism may also require “termination of preemptible traffic that had been using the paths that were designated as protection paths”.

The person of ordinary skill in the art will also recognise that Humblet et al do not teach or fairly suggest any of the elements of the present invention. In particular, the present invention defines methods in which two or more grades of service are provided for the unprotected (preemptible) traffic, and the specific grade of service associated with any given flow of unprotected traffic is used to control access to the protection channel that is occupied by that traffic flow. Humblet et al do not teach or suggest any equivalent functionality. At best, Humblet et al. teach that unprotected (preemptible) traffic may have to be terminated in order to permit switching of the protected traffic from the working channel. However, Humblet et al do not even hint at the possibility that this operation might be modified (much less prevented entirely) based on a class of service of the unprotected (preemptible) traffic.

In light of the foregoing, it is respectfully submitted that the presently claimed invention is clearly distinguishable over the teaching of the cited reference, taken alone or in any combination. Thus it is believed that the present application is in condition for allowance, and early action in that respect is courteously solicited.

If any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this response, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 19-5113.

Respectfully submitted,

/Kent Daniels/

By: Kent Daniels, P.Eng.  
Reg. No. 44206  
Attorney for the Applicants

Date: September 27, 2007

Ogilvy Renault  
Suite 1600  
1981 McGill College Avenue  
Montreal, Quebec  
Canada, H3A 2Y3  
(613) 780-8673